

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

January 5, 2004

CALL TO PODIUM:

Mark Depoe
Long Range Planning Director

RESPONSIBLE STAFF:

Mark Depoe
Long Range Planning Director

Fred Felton
Assistant City Manager

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
X	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	10/29/2003
	11/5/2003
Hearing Date	11/17/2003
Record Held Open	12/8/2003
Policy Discussion	1/5/2004

TITLE: TEXT AMENDMENT

T-361 -- An Ordinance To Amend Chapter 24 Of The City Code (City Zoning Ordinance), Article I, Entitled, "In General," So As To Create New §24-10A Entitled, "Floating Zones," To Designate Certain Zoning Districts As Floating Zones And To Establish Requirements For The Approval Of Floating Zones.

SUPPORTING BACKGROUND:

A "floating zone" allows the legislative body more flexibility in the review and implementation of plans and determining the appropriate and compatible land uses within particular zoning districts. In the City's case, this type of zone has essentially existed in the MXD, CD, and CBD zoning districts. This type of flexibility assisted the Mayor and City Council in the implementation of such developments as the Kentlands, Lakelands and Washingtonian in the City of Gaithersburg.

Given that this type of flexible zone has essentially existed within the City, the T-361 text amendment is simply a "housekeeping" text amendment which merely identifies and clarifies that the MXD (Mixed Use Development), CD (Corridor Development) and CBD (Central Business District) zones are Floating zones as opposed to Euclidean zones.

A joint public hearing was held on November 17, 2003. The Planning Commission's record was held open for 11 days (November 28, 2003) and is now closed. The Mayor and City Council record was held open for 21 days (December 8, 2003). There was no public testimony given regarding this text amendment during the public hearing. The Planning Commission at their December 3, 2003 meeting reviewed the proposed Text Amendment and has forwarded their recommendation of approval to the Mayor and City Council.

Attached:

Index of Exhibits

Exhibit 8: Planning Commission Staff Report

Exhibit 9: Minutes of November 17, 2003, Joint Public Hearing

Exhibit 10: Transcripts of November 17, 2003, Joint Public Hearing

Exhibit 11: Communication: Planning Commission

Exhibit 12: December 8, 2003 Letter from Peter Henry, of BP

Realty Investments

Text Amendment Ordinance

DESIRED OUTCOME:

Hold Policy Discussion and Approve Text Amendment T-361 Ordinance.

INDEX OF MEMORANDA

T-361

1. Application
2. Proposed Ordinance
3. Letter requesting advertisement of the 11-17-03 Joint Public Hearing in the 10-29-03 and 11-05-03 issues of the *Gaithersburg Gazette*.
Attached: Facsimile Transmittal Confirmation
4. Notice of 11-17-03 Joint Public Hearing as sent on 10-31-03
5. List of people/agencies notified of the hearing
6. Legal Advertisement Notification
7. **Staff Report:** November 17, 2003, Joint Public Hearing
8. **Staff Report:** December 3, 2003, Planning Commission Meeting for recommendation to the Mayor and City Council.
9. Minutes of November 17, 2003, Joint Public Hearing
10. Transcripts of November 17, 2003, Joint Public Hearing
11. Communication: Planning Commission
12. Letter to Mayor and City Council from Peter Henry, of BP Realty Investments, dated December 8, 2003
13. **Staff Report:** January 5, 2003, Mayor and City Council Policy Discussion

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: December 3, 2003

TEXT AMDT.: **T-361**

TITLE: **FLOATING ZONE ORDINANCE**

REQUEST: **RECOMMENDATION TO M&C**

ADDRESS: N/A

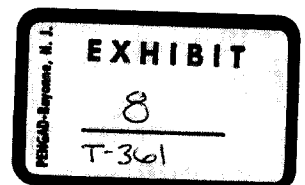
ZONE: MXD, CBD, and CD Zoning Districts

APPLICANT/REPRESENTATIVE/ATTORNEY/DEVELOPER: (as applicable)

STAFF PERSON: Mark DePoe, Long-Range Planning Director

Enclosures:

Staff Comments
Exhibit 2: Text Amendment Ordinance
Exhibit 6: Legal Advertisement Notification
November 17, 2003 Joint Public Hearing Draft Minutes



STAFF COMMENTS

A joint public hearing was held on November 17, 2003. The Planning Commission's record was held open for 11 days (November 28, 2003) and is now closed. The Mayor and City Council record was held open for 21 days (December 8, 2003). At this time, there is one addition to the record: a copy of the legal ad. The minutes provided are in draft form and will be reviewed and approved by the Mayor and City Council at their December 1, 2003 meeting. Any changes to the minutes will be provided to you during the Planning Commission meeting for this application. At such time the minutes are approved and the transcripts for the joint public meeting are completed, they will be entered into the file as exhibits. There was no public testimony given regarding this text amendment.

The T-361 Text Amendment is an Ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article I, entitled, "In General," so as to create new §24-10A entitled, "Floating Zones," to designate certain Zoning Districts as Floating Zones and to establish requirements for the approval of Floating Zones.

"The rigid concepts and application of the conventional "Euclidean Zone" principles fostered the need for an alternative zoning device to free the legislative body to meet specialized demands in areas for certain types of land use development as those needs arise. The new zoning device termed the 'floating zone' met this need and provided the flexibility necessary to assist in the implementation of comprehensive planning proposals ...The name is derived from the concept of a special, detailed use district said to "float" over an entire county, city or town until a property owner applies for its descent upon his property...These zones are generally carefully considered and drawn so as to ensure compatibility with adjoining uses by imposing safeguards through restrictive use limitations and development standards." [Guide to Maryland Zoning Decisions, Page 81]

In others words, a "floating zone" allows the legislative body more flexibility in the review and implementation of plans and determining the appropriate and compatible land uses within particular zoning districts. In the City's case, this type of zone has essentially existed in the MXD, CD, and CBD zoning districts. This type of flexibility provided to the Mayor and City Council assisted in the implementation of such developments as the Kentlands, Lakelands and Washingtonian in the City of Gaithersburg.

Given that this type of flexible zone has essentially existed within the City, the T-361 text amendment is simply a "housekeeping" text amendment merely identifies and clarifies that the MXD (Mixed Use Development), CD (Corridor Development) and CBD (Central Business District) zones are Floating zones as opposed to Euclidean zones.

This item is on your agenda for a transmittal of a recommendation to the Mayor and Council.

Under Jennifer's leadership, the department won numerous awards including four Smart Growth Awards from the State of Maryland. Jennifer was involved with so many important projects over the years which helped create Gaithersburg as we know it today. Jennifer was a key staff member involved in many Master Plan efforts, zoning initiatives, and redevelopment projects such as Olde Towne Gaithersburg. Additionally, Jennifer helped implement the charrette process which we have used successfully throughout the City. We will miss Jennifer and wish her the best for the future.

Until further notice, Neighborhood Services Director Greg Ossont will be the acting Director of Planning and Code Administration. I firmly believe Greg's leadership skills and problem solving abilities will serve the City well during this transition period.

XI. JOINT PUBLIC HEARINGS

1. **T-360 - Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Entitled, "Zoning," Article I, Entitled, "In General," so as to Create new §24-8A Entitled, "Applicability of Special Conditions," to Require Compliance With Master Plan Special Conditions on Approvals of Applications for Local Map Amendments, Sketch Plans and Schematic Development Plans, Concept Plans (CD Zone), Optional Method and Special Exceptions, and Further to Amend Article V, Entitled, "Site Development Plans," §24-179A Entitled, "Special Conditions," to Conform to New §24-8A of Chapter 24**

Assistant City Manager Felton stated the above public hearing was advertised in the *Gaithersburg Gazette* on October 29 and November 5, 2003, with five exhibits in the record file. He stated that under the current law, master plan special conditions are only applicable to site development approvals by the Planning Commission. The proposed Ordinance would make the master plan special conditions applicable to Mayor and City Council and Board of Appeal actions such as local map amendments, sketch plans, schematic development plans, concept plans, optional method applications, and special exceptions.

There were no speakers from the public.

Motion was made by Commissioner Bauer, seconded by Commissioner Hicks, that the Planning Commission record on T-360, be held open for eleven (11) days.

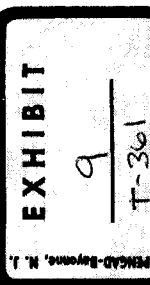
Vote: 5-0

Motion was made by Council Member Marraffa, seconded by Council Member Alster, that the City Council record on T-360, be held open for twenty-one (21) days.

Vote: 5-0

2. **T-361 - Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article I, Entitled, "In General," so as to Create New §24-10A Entitled, "Floating Zones," to Designate Certain Zoning Districts as Floating Zones and to Establish Requirements for the Approval of Floating Zones**

Long Range Planning Director Depoe stated the above public hearing was advertised in the *Gaithersburg Gazette* on October 29 and November 5, 2003, with five exhibits in the record file. He stated that staff is viewing this as a housekeeping text amendment merely identifies and clarifies that the above zones (MXD, CD, CBD) are floating zones as opposed to Euclidean zones. He added that City Attorney Abrams did draft the proposed text amendment.



Planning Commission Chair Keller asked whether the proposed text amendment have any effect on site plan review for other zones that are not considered floating. City Attorney responded that it would not.

There were no speakers from the public.

Motion was made by Commissioner Levy, seconded by Commissioner Hicks, that the Planning Commission record on T-361, be held open for eleven (11) days.

Vote: 5-0

Motion was made by Council Member Marraffa, seconded by Council Member Alster, that the City Council record on T-361, be held open for twenty-one (21) days.

Vote: 5-0

3. **T-362 - Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article III, Entitled, "Regulations Applicable to Particular Zones," Division 22, Entitled, "CD Zone, Corridor Development," §24-160G.4. Entitled, "Development Standards," so as to Establish Additional Building Design Requirements Applicable to Improvements in the CD Zone**

Long Range Planning Director Depoe stated the above public hearing was advertised in the *Gaithersburg Gazette* on October 29 and November 5, 2003, with five exhibits in the record file. He stated that the Mayor and City Council had expressed concern with the potential impacts of development in the CD Zone on residentially zoned single-family neighborhoods. He stated the text amendment would prohibit customer entrances to retail or restaurant uses from abutting or being visible to single-family homes.

Council Member Marraffa asked if staff conducted any research to find if anyone would be effected that may need to grandfather into the proposed text amendment. Mr. Depoe stated that anything that would be affected would be grandfather into the text amendment.

Speaker from the public:

Robert Dalrymple, Linowes and Blocher, representing the owners of the Holbrook Shopping Center, 409 South Frederick Avenue, which is designated in the CD Zone. Mr. Dalrymple referred to a Court of Appeals decision, *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2002). He stated that the center was initially built in the C-1 Zone, the property was destroyed due to fire in September 2000. He stated that the property was rezoned to the CD Zone and has been redeveloped in conformance with the CD Zone. He submitted and requested that documentation be placed in the record. He also requested that the use of "non-retail commercial" limited to the second floor of the Holbrook Shopping Center be further explained as to what constitutes a "non-retail commercial" use. He also submitted a list of potential uses to be considered "non-retail commercial" and would not be prohibited by the proposed text amendment. He asked for flexibility for potential tenants in the second floor space.

There were no speakers from the public.

Motion was made by Commissioner Levy, seconded by Commissioner Hicks, that the Planning Commission record on T-362, be held open for eleven (11) days.

Vote: 5-0

TRANSCRIPT OF
JOINT PUBLIC HEARING

ON

T-361

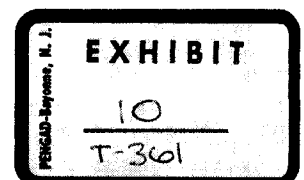
Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article I, Entitled, "In General," so as to Create New §24-10A Entitled, "Floating Zones," to Designate Certain Zoning Districts as Floating Zones and to Establish Requirements for the Approval of Floating Zones

BEFORE THE
CITY OF GAITHERSBURG
MAYOR AND CITY COUNCIL
AND
PLANNING COMMISSION

ON

November 17, 2003

Transcribed by
Doris R. Stokes



PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Vice President Somerset
Council Member Alster
Council Member Edens
Council Member Marraffa
Council Member Schilchting

PLANNING COMMISSION

Chair Keller
Vice Chair Bauer
Commissioner Hicks
Commissioner Levy
Commissioner Winborne

CITY ATTORNEY

Stanley D. Abrams, Esq.

CITY MANAGER

David B. Humpton

STAFF

Long Range Planning Director Depoe

Katz Next Mr. Mark Depoe will be doing T-361.

Depoe Thank you. This is a joint public hearing on T-361, an Ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article I, Entitled, "In General," so as to Create New §24-10A Entitled, "Floating Zones," to Designate Certain Zoning Districts as Floating Zones and to Establish Requirements for the Approval of Floating Zones. In particular the MXD (Mixed Use Development) Zone, CD (Corridor Development) Zone, and the CBD (Central Business District) Zone. The hearing was duly advertised in the *Gaithersburg Gazette* on October 29 and November 5, 2003. At the present time there are five (5) exhibits in the record file and are referenced in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or in the Planning and Code Administration Office during regular business hours at City Hall. Any objections to the receipt of any exhibits should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. Briefly, staff looks at this as a housekeeping text amendment merely identifies and clarifies that the above zones, the MXD, CD, and then CBD, are floating zones as opposed to Euclidean zones. And I would request that if there are any questions by the Mayor and City Council and Planning Commission, then they be directed to Mr. Stan Abrams. He helped us fashion the text amendment and would be more of an authority on the subject.

Katz Thank you very much. Any questions of Mark or Stan Abrams?

Keller I do.

Katz Yes please.

Keller Stan, will this text amendment have any effect on site plan review for the other zones that are not considered floating?

Abrams No.

Keller Ok.

Katz Thank you. Any other questions of Mark or Stan? Do we have anyone in the audience who would like to testify on this public hearing? Thank you very much. It has been suggested that the Planning Commission hold their record open eleven (11) days and the Mayor and Council twenty-one (21) days. The Planning Commission please.

Levy Madam Chair, I move that for T-361, the Planning Commission hold its record open for eleven (11) days.

Hicks Second.

Keller All in favor?

Commission Ayes.

Keller Aye. Motion passes 5-0.

Katz And it has been suggested that the Mayor and Council twenty-one (21) days. Is there a motion?

Marraffa Mr. Mayor I move that we hold the record open for twenty-one (21) days on T-361.

Alster Second.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes.

Katz Opposed? That carries unanimously (5-0) as well.

END OF JOINT PUBLIC HEARING

T-361

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

VIA: David Humpton, City Manager

FROM: Mark DePoe, Long-Range Planning Director

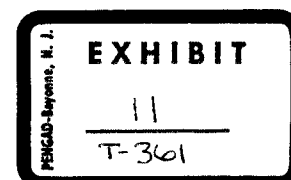
DATE: December 8, 2003

SUBJECT: T-361 -- Amendment of Chapter 24 of the City Code (City Zoning Ordinance), Article I, entitled, "In General," so as to create new §24-10A. entitled, "Floating Zones," to designate certain zoning districts as floating zones and to establish requirements for the approval of floating zones.

At its regular meeting on December 3, 2003, the Planning Commission made the following motion:

Commissioner Winborne moved, seconded by Commissioner Hicks, to recommend Text Amendment T-361 for ADOPTION to the Mayor and City Council.

Vote: 3-0 (Absent: Commissioners Bauer and Levy)



Acting P&C Director _____ Greg Ossont _____



BP REALTY INVESTMENTS

December 8, 2003

Mayor and City Council
Planning Commission
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877-2098

RE: Proposed Text Amendment T-361

Dear Mayor, City Council and Planning Commission members:

We have received the proposed text amendment T-361 to amend Chapter 24 of the City Code (City Zoning Ordinance), Article I, Entitled "In General", so as to create new Section 24-10A, entitled, "Floating Zones," to designate certain zoning districts as floating zones and to establish requirements for the approval of floating zones. As you know, we have certain applications pending within the City, including Z-294, CSP-02-001, Z-278A and SDP-01-001.

The proposed text seeks to empower the City to affix floating zones to private property on its own initiative. Further, the text proposes that any schematic development plan, concept plan, or site development plan processed within a floating zone will only be approved upon meeting various criteria, "with or without conditions."

Applying floating zones in the manner proposed is not appropriate. Further, conditions which are unilaterally placed on individual properties by the City, including those subject to our long pending applications violate proper planning and zoning purposes, improperly impact our private property rights, and can lead to significant legal exposure to the City. We believe that the adoption of the proposal is ill-advised, and oppose it.

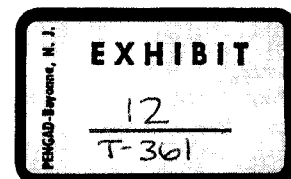
Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Henry'.

Peter Henry

CC: David B. Humpton, City Manager
Jody Kline, Esq.
Benny Kass, Esq.

10000 Falls Road, Suite 100, Potomac, Maryland 20854
(301) 299-2099 ♦ Fax (301) 299-2033



ORDINANCE No. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE
(CITY ZONING ORDINANCE), ARTICLE I, ENTITLED, "IN GENERAL,"
SO AS TO CREATE NEW §24-10A ENTITLED, "FLOATING
ZONES," TO DESIGNATE CERTAIN ZONING DISTRICTS AS
FLOATING ZONES AND TO ESTABLISH REQUIREMENTS
FOR THE APPROVAL OF FLOATING ZONES.

Text Amendment T-361

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled that Chapter 24 of the City Code (Code Zoning Ordinance), Article I is hereby amended to create new §24-10A to read as follows:

ARTICLE I. IN GENERAL

Sec. 24-10A. Floating Zones.

(1) The following zoning districts are hereby designated and established as floating zones in the City of Gaithersburg:

Division 19. MXD Zone, Mixed Use Development
Division 21. CBD Zone, Central Business District
Division 22. CD Zone, Corridor Development

(2) The approval and placement of floating zones may only occur upon a finding by the City Council that the application therefore:

(a) Complies with the purposes and intent of the zone as stated in the zoning ordinance; and

(b) As applied will be compatible and harmonious with existing and planned land uses in the surrounding area.

(3) All properties previously zoned in the MXD Zone, CBD Zone, and CD Zone prior to the effective date of this ordinance shall have been conclusively presumed to have satisfied the standards set forth in §24-10A(2) for approval of floating zones.

(4) Floating zones may be affixed to property by local map amendment or by comprehensive zoning. In the case of comprehensive zoning, such zones may be affixed to property only where the location and placement of such zoning district has been recommended in a duly adopted master plan for the area in which the property is located. In addition, in the case of comprehensive zoning, such zones and their location and placement where recommended in a duly adopted master plan shall be conclusively presumed to have satisfied the standards set forth in §24-10A(2).

(5) Notwithstanding the provisions of §24-10A(3) and (4) above, any schematic development plan, concept plan (CD Zone) or site development plan shall only be approved upon satisfaction of the respective finding required for approval of such plans with or without conditions.

ADOPTED this ____ day of _____, 2004.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2004. APPROVED/DISAPPROVED by the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2004.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2003, and the same was approved by the Mayor of the City of Gaithersburg on the ____ day of _____, 2004. This Ordinance will become effective on the ____ day of _____, 2004.

DAVID B. HUMPTON, City Manager